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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,361	03/22/2000	Beatrice Toumi	6388-0501-0	9261
22850	7590	03/24/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			YU, GINA C	
		ART UNIT	PAPER NUMBER	
		1617		

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/533,361	TOUMI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gina C. Yu	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,17-22 and 24-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,17-22 and 24-47 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

In view of the board decision mailed on March 29, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim amendment filed on January 8, 2004 along with appeal brief is entered. Claims 1, 3, 17-22, 24-47 are pending. Pursuant to the recommendation of the board, new rejections are made in view of further search and consideration.

### ***Claim Objections***

Claims 27-29 are objected to because of the following informalities: claims 27-29 are identical claims which depend on same claim, claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 1, 3, 17, 18, 20, 21, 24, 35-36, 37, 38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sebag et al. (WO 98/03155) in view of Sidu (US 4,963,353).**

Sebag et al. teach washing and conditioning compositions containing polymethylsiloxanes (PDMS) onto which are grafted mixed polymer units of poly(methacrylic acid type and of polyalkyl (meth)acrylate type, via a connected chain unit of thiopropylene type; and PDMS which are grafted by polymer units of polyisobutyl (meth)acrylate type via a connecting chain unit of thiopropylene type. See English equivalent, US 6162423<sup>1</sup>, col. 6, lines 54 – 61. See instant claims 1, 3, 20, 21, 34, and 35-47. See also col. 6, lines 28 –37 for the teaching that The polysiloxane of formula (IV) in instant claim 1 is a PDMS to which are grafted, via a connecting link of thiopropylene type, mixed polymer units of the polymethacrylic acid type and of the polyalkyl methacrylate type. The reference teaches a foaming composition for washing and conditioning keratinous materials, particularly hair and/or skin. The reference teaches that topical application of the composition to skin provides softeness to the skin. See col. 17, lines 30 – 33.

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<sup>1</sup> On the face of U.S. Patent No. 6,162,423, the corresponding PCT Publication number is WO96/03155. This is viewed as a misprint.

While Sebag et al. teach adding additives such as proteins, the reference fail to teach one or more slimming, firming, antiglycant and/or vasoprotective compounds. See col. 10, lines 8-16.

Sidhu teaches biological extracts for regenerating and tightening the skin. The reference teaches in Example 3 a biological extract mixed with olive oil tightens skin and eliminates wrinkles and skin spots. See Examples 1 and 3.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the teaching of Sebag et al. by adding to the skin composition the wrinkle-eliminating biological extracts of Sidhu as motivated by the references because (a) adding cosmetic additives to the Sebag skin composition was envisioned; and (b) Sidhu teaches that the biological extracts tightens the skin and eliminates wrinkles and skin spots. The skilled artisan would have had a reasonable expectation of successfully producing a skin care composition which provides softness and antiaging effects to the skin.

**Claims 1, 3, 17, 18, 20-22, 24, 27-30, and 34-47 are rejected over Fox (US 5879684) in view of Sebag et al. (WO 98/03155).**

Fox teaches a method to eliminate wrinkles and tighten skin by topically applying a gel composition comprising Vegetensor, a plant protein complex, and algal extract. See col. 2, lines 50 – 67. See instant claims 21, 22, 35, and 20. The protein complex is said to be “filmogeneous and is well suited to use in creams, lotions, and the like”. See Id. The reference further teaches, “[o]nce applied, the dried product retracts, thereby

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lending the tensor, or skin tightening, effect". See Id. The reference teaches using the composition on the areas where signs of aging show earliest. See col. 7, lines 34 – 48.

While Fox teaches using a film-forming agent (hydroxyethyl methacrylate homopolymers) that is water impermeable and highly pliable, the reference fails to teach the grafted polymethylsiloxanes of instant formula (IV).

Sebag et al., discussed, above teach polymethylsiloxanes (PDMS) onto which are grafted mixed polymer units of poly(methacrylic acid type and of polyalkyl (meth)acrylate type, via a connected chain unit of thiopropylene type; and PDMS which are grafted by polymer units of polyisobutyl (meth)acrylate type via a connecting chain unit of thiopropylene type. See English equivalent, US 6162423<sup>2</sup>, col. 6, lines 54 – 61. See instant claims 1, 3, 20, 21, 34, and 35-47. The polysiloxane of formula (IV) in instant claim 1 is a PDMS to which are grafted, via a connecting link of thiopropylene type, mixed polymer units of the polymethacrylic acid type and of the polyalkyl methacrylate type. The reference teaches that topical application of the composition to skin provides softness to the skin. See col. 17, lines 30 – 33.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Fox by incorporating the grafted polymethylsiloxane of Sebag et al. as motivated by the teaching of the references because Sebag teaches that the polysiloxane provides softness to the skin. The skilled artisan would have had a reasonable expectation of successfully producing a film-forming, skin tightening gel composition which provide softness to the skin.

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**Claims 1, 3, 17-22, 24-47 are rejected as unpatentable under 35 U.S.C. § 103**

**(a) over Fox (US 5879684) in view of Kumar et al. (US 5468477).**

Fox is discussed above.

While Fox teaches using a film-forming agent (hydroxyethyl methacrylate homopolymers) that is water impermeable and highly pliable, the reference fails to teach the grafted polymethylsiloxanes of instant formula (IV).

Kumar teaches vinyl-silicone graft polymers that are useful in making cosmetic compositions. See col. 4, line 50 – col. 6, line 16. In the mercapto functional silicone compound shown in col. 8, line 30 – col. 9, line, when R1, G5, and G6 of the Kumar polymer is C1-4 alkyl, the prior art meets G1 of instant formula (IV); R2 and R4 of the Kumar polymer being C1-10 alkylene meets G2 of instant formula (IV) when n = 1; G3 and G2 of the prior art is vinyl polymeric segments consisting essentially of polymeric free radially polymerizable monomer, meet G3 and G4 of instant claim. Example 2 teaches copolymer using mercapto functional silicone (PS850), acrylic acid (anionic monomer of G3 of instant claim) and n-butyl methacrylate (hydrophobic monomer of G4 of instant claim). The reference teaches that the polymer is used in cosmetics having active ingredients such as “skin-improvers”. See col. 25, lines 10-29. The vinyl-silicone copolymers are used to make a gel composition, and said to also have “excellent film-forming capability”, exhibiting a superior water-resistance, oil-resistance, and other characteristics required for cosmetic films”. See col. 17, line 52 – col. 18, line 24. The reference also teaches using preferably 0.2-30 % by weight of vinyl-silicone

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copolymer to realize the desired cosmetic film property. See col. 43—50. See also col. 17, lines 56-66; col. 19, lines 4-13. See instant claims 19, 25, 26, and 31-33.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Fox by substituting the film-forming agent with the vinyl-silicone graft polymers of Kumar et al. because the latter teaches that the vinyl-silicone polymer renders “excellent film-forming capability”, superior resistance to water and oil, and otherwise suitable for cosmetic films. The skilled artisan would have had a reasonable expectation of successfully producing a skin tightening composition with superior or equivalent film-forming effect on the skin because both Fox and Kumar teach making cosmetic gel, lotion, and cream formulations.

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER